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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

CHILKAT INDIAN VILLAGE OF KLUKWAN;
SOUTHEAST ALASKA CONSERVATION COUNCIL;
LYNN CANAL CONSERVATION; and RIVERS
WITHOUT BORDERS, a project of TIDES CENTER,

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT; BRIAN STEED
in his official capacity as Acting Director of the Bureau
of Land Management; KAREN MOURITSEN, in her
official capacity as Acting Alaska State Director of the
Bureau of Land Management; and DENNIS TETZEL, in
his official capacity as Field Manager of the Bureau of
Land Management Glenallen Field Office,

Defendants.

and

ALYU MINING CO., INC., HAINES MINING and
EXPLORATION, and CONSTANTINE NORTH, INC.
(CONSTANTINE),

**NOTICE OF NINTH
CIRCUIT ORDER
WITHDRAWING A CASE
UPON WHICH
DEFENDANT-
INTERVENORS RELIED IN
THEIR OPPOSITION
BRIEF**

Case No. 3:17-cv-00253-TMB

Chilkat Indian Village of Klukwan et al. v. BLM et al.

Defendant Intervenors' NOTICE OF WITHDRAWAL OF NINTH CIRCUIT ORDER
WITHDRAWING A CASE UPON WHICH DEFENDANT INTERVENORS RELIED
IN THEIR OPPOSITION BRIEF

Case No. 3:17-cv-00253-TMB

NOTICE OF WITHDRAWAL OF NINTH CIRCUIT ORDER WITHDRAWING A CASE UPON WHICH DEFENDANT INTERVENORS RELIED IN THEIR OPPOSITION BRIEF

Pursuant to Local Alaska Rule 7.1 (i)(B) Defendant Intervenors hereby give notice of the Ninth Circuit Court of Appeals October 25, 2018 Order (Slip Opinion, Attachment 1) withdrawing its December 17, 2017 Opinion in *Havasupai Tribe v. Provencio*, 876 F.3d 1242, 1254 (9th Cir. 2017). After withdrawing its December 17, 2017 Opinion, the Ninth Circuit panel vacated the District Court’s Judgment ON Plaintiffs’ fourth claim.

The District Court had held that Plaintiffs lacked prudential standing because their fourth claim fell outside the Mining Act of 1872’s zone of interest. The Ninth Circuit found that Plaintiffs’ “also argued that the Forest Service’s VER [Valid Existing Rights] determination violated the FLPMA [Federal Land Management and Policy Act]”, but that “the district court did not address the FLPMA’s zone of interest in its analysis...” (Slip Op. at page 22). The Ninth Circuit held that: “[W]e conclude that the FLPMA, and not the Mining Act, forms the legal basis for the Trust’s fourth claim.” *Id.* Accordingly, the Ninth vacated the District Court’s Judgment on Plaintiffs’ fourth claim and remanded it for consideration on the merits. (Slip Op. at page 24).

Defendant Intervenors had relied upon the Ninth Circuit’s Opinion in *Havasupai Tribe v. Provencio*, 876 F.3d 1242, 1254 (9th Cir. 2017) for their argument that Plaintiffs lacked prudential standing, which was made at pages 6 and 14 of their Opposition Brief. Accordingly, the Ninth Circuit’s withdrawn 2017 Opinion in *Havasupai Tribe, supra.*, no longer supports Defendant-Intervenors’ argument.

Respectfully submitted,

DATED: October 28, 2018

s/James F. Clark
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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2018 I served a copy of Defendant-Intervenors' NOTICE OF WITHDRAWAL OF NINTH CIRCUIT ORDER WITHDRAWING A CASE UPON WHICH DEFENDANT INTERVENORS RELIED IN THEIR OPPOSITION BRIEF by electronically filing it with the Clerk of the U.S. District Court for Alaska which will send electronic copies of such filing to all attorneys of record in this case, all of whom are registered with the Court's CM/ECF system.

s/James F. Clark
James F. Clark